

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL DOCKET NO.: 5:05CR202-V**

UNITED STATES OF AMERICA

vs.

MONROE HERRING

ORDER

THIS MATTER is before the Court on Defendant's "Motion To Reconsider," filed April 2, 2007, and the Government's response in opposition, filed September 4, 2007. (Documents ##44, 51)

Defendant seeks relief pursuant to Rule 35(a) of the Federal Rules of Criminal Procedure.¹ The gist of Defendant's motion is that the Court erred in its application of the U.S. Sentencing Guidelines and subsequent calculation of Defendant's advisory guidelines offense level. More specifically, Defendant contends that he should have benefitted from U.S.S.G. §§5C1.2(a)(1) - (5) and 3E1.1 despite the fact that he was never debriefed by federal authorities. However, Defendant fails to present the Court with any legal argument not already made during the March 2006 sentencing hearing. Even if this Court were authorized to resentence Defendant Herring,² because these issues were thoughtfully argued and considered during the sentencing hearing, the Court would decline to reconsider the sentence originally imposed. (Sentencing Hr'g Tr. at 39.)

IT IS, THEREFORE, ORDERED that Defendant's Motion To Reconsider is hereby **DENIED**.

Signed: September 5, 2007



Richard L. Voorhees
United States District Judge



¹ Rule 35(a) provides that: "Within 7 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error." FED. R. CRIM. P. 35.

² The Fourth Circuit has held that the seven day time period is a jurisdictional limitation. See United States v. Shank, 395 F.3d 466, 468-69 (4th Cir.2005) (district court effectively denied motion by failing to rule within seven days even though defendant's motion was filed within seven day period). Therefore, this district court cannot entertain Defendant's motion beyond the seven day period.

